Supreme Court, U.S.
FILED
JUL 20 1998
OFFICE OF THE CLERK

No. 97-1865

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

TERRIE SNYDER,
Petitioner,

v.

SAMUEL J. RINGGOLD,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT C. VERDERAIME
Counsel of Record for Respondent
Verderaime & DuBois, P.A.
1231 North Calvert Street
Baltimore, Maryland 21202

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD FOR DETERMINING QUALIFIED IMMUNITY AND WHETHER ITS DECISION CONFLICTS WITH *UNITED STATES v. LANIER*.

II. WHETHER A REASONABLE POLICE OFFICER WOULD HAVE UNDERSTOOD THAT RESTRICTING THE MANNER IN WHICH PETITIONER RECEIVED DEPARTMENTAL INFORMATION WOULD VIOLATE A CLEARLY ESTABLISHED FIRST AMENDMENT RIGHT.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

ARGUMENT 5

I. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD AND ITS DECISION DOES NOT CONFLICT WITH *UNITED STATES v. LANIER* 5

A. The Court Of Appeals Did Not Require A Specific Adjudication In Order To Show That A Right Has Been Clearly Established 6

B. The Court Of Appeals Applied The Correct Legal Standard For Determining Qualified Immunity 7

C. The Court Of Appeals Decision Does Not Conflict With *United States v. Lanier* 9

TABLE OF CONTENTS (CONT'D)

Page

II. A REASONABLE POLICE OFFICER WOULD NOT HAVE UNDERSTOOD THAT RESTRICTING THE MANNER IN WHICH PETITIONER COULD RECEIVE DEPARTMENTAL INFORMATION WOULD VIOLATE ANY CLEARLY ESTABLISHED FIRST AMENDMENT RIGHT 10

A. There Is No Clearly Established Right To Governmental Information 10

B. There Is No Clearly Established Right To Nondiscriminatory Access To Governmental Information 11

1. The Alleged Right Had Not Been Established By Specific Adjudication 12

2. Core First Amendment Principles Do Not Apply With Obvious Clarity To Respondent's Specific Conduct 14

TABLE OF CONTENTS (CONT'D)

Page

C. The Defendant Could Reasonably Have Believed That His Actions In Restricting Plaintiff's Access To Departmental Information Were Lawful 18

CONCLUSION 22

TABLE OF AUTHORITIES

Cases **Page**

American Broadcasting Cos. v. Cuomo, 570 F.2d 1080 (2d Cir. 1977) 13

Anderson v. Creighton, 483 U.S. 635 (1987) 7, 18

Anderson v. Cryovac, 805 F.2d 1 (1st Cir. 1986) 12

Branzburg v. Hayes, 408 U.S. 665 (1972) 10, 19

Capital Cities Media, Inc. v. Chester, 797 F.2d 1164 (3d Cir. 1986) 10

Cohen v. Cowles Media Co., 501 U.S. 663 (1991) 21

Dimeglio v. Haines, 45 F.3d 790 (4th Cir. 1995) 8

Food Lion, Inc. v. Capital Cities/ABC, Inc., 887 F. Supp. 811 (M.D.N.C. 1995) 21

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 7

Houchins v. KQED, Inc., 438 U.S. 1 (1978) 10

Pell v. Procunier, 417 U.S. 817 (1974) 18, 19

Press Enterprises Co. v. Superior Court, 464 U.S. 501 (1984) 10, 11

TABLE OF AUTHORITIES (CONT'D)

Page

Quad City Community News Service, Inc. v. Javens, 334 F. Supp. 8 (S.D. Iowa 1971) 13

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) 11

Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362 (Tex. Civ. App. 1979) 13

United States v. Lanier, 117 S. Ct. 1219 (1997) ... 6, 9

Westinghouse Broadcasting, Inc. v. Dukakis, 409 F. Supp. 895 (D. Mass. 1976) 13

Zemel v. Rusk, 381 U.S. 1 (1965) 10

Statutes

18 U.S.C. § 242 9

42 U.S.C. § 1983 ..... 3, 4, 7, 9

U.S. Const. amend. I ..... 3, 4, 5, 6 passim

U.S. Const. amend. XIV 3

STATEMENT OF THE CASE

The plaintiff-petitioner Terrie Snyder is a journalist who works in the print and television media. The defendant-respondent Samuel J. Ringgold is the Director of the Public Affairs Division of the Baltimore City Police Department, and is responsible for the dissemination of information from the Department to the media (J.A. at 7-15).

In 1992, Snyder was investigating the death of a Baltimore resident for WBAL-TV. The Baltimore Police Department (the "Department") gave Snyder a police report concerning the incident (J.A. at 6, 16b ¶ 5). Snyder subsequently obtained an additional report, which, unlike the first report, indicated that a prominent local politician had some connection with the decedent (J.A. at 35 ¶ 3). A story was then aired on WBAL-TV which suggested that the Department may have been attempting to cover up the politician's connection to the victim (J.A. at 35 ¶ 3).

Although Snyder alleges that she "began to experience difficulty in obtaining information" from the Department as a result of the 1992 story (J.A. at 36), there is no record evidence to support this contention. There is no record evidence that Ringgold denied or impeded Snyder's access to any departmental information throughout the remainder of 1992, during the entire calender year 1993, or between January and May 1994. Between the 1992 story and May 31, 1994, there is no record evidence of any incident where Snyder was treated differently from any other journalist covering the Department.

In 1993, the Department instituted a new policy requiring that all journalists obtain all information regarding homicides from a Public Information Officer (PIO) of the Department, rather than directly from homicide detectives. A PIO (Ringgold or one of his staff) would be "on call" to be paged on the weekends to provide information. According to Snyder, after this policy had been in place for several months, Ringgold advised Snyder and her then employer, WBAL-TV, that he was tired of responding to Snyder's weekend pages. Snyder then wrote an article in the *City Paper* criticizing the new policy regarding the dissemination of information to journalists as an attempt to silence homicide detectives' complaints about Department policy. In that article, Snyder attributed a statement to Ringgold, stated that he claimed it was an off-the-record comment to another reporter (apparently at the assignment desk of WBAL-TV), and then alleged that the other reporter had confirmed that the comment was not, in fact, off-the-record (*see* J.A. at 16).

Thereafter, on May 31, 1994, Ringgold wrote a letter to the news director for WBAL-TV, stating that the situation regarding Snyder had "become intolerable." He expressed his "outrage[] that an off the record comment" he made to one of WBAL's assignment editors "made its way into a *City Paper* article written by Terrie Snyder," and stated that, because of the incident, he would "never go off the record with people on [WBAL's] assignment desk" and had ordered his staff to do likewise (J.A. at 14). Ringgold also asserted in the letter that Snyder was continuing to abuse the paging system by paging PIOs needlessly on weekends (*see* J.A. at 15). Finally, Ringgold complained that Snyder had falsely represented

to WBAL that the Department had not provided her with all available information about a pending homicide case (*see* J.A. at 14).

Following the May 31, 1994 letter, Ringgold refused to allow Snyder to participate with a television crew from WBFF-TV in filming interviews with Department personnel in the Department's headquarters about the homicide division. Ringgold also contacted the editor of the *City Paper* and informed her that he would no longer talk to Snyder about any story. Unlike other journalists, Snyder was directed to submit all requests for information from the Department in writing (*see* J.A. at 7-9, 16c). Snyder was singled out for access restrictions because she violated a promise of confidentiality by attributing "off-the-record" information, because she had repeatedly abused the Department's public information system by paging officers unnecessarily on weekends, and because she had misrepresented the Department's actions to her employer (*see* J.A. at 7-9, 14-15).

Based on the foregoing events, Snyder brought this § 1983 suit, alleging that Ringgold violated the First and Fourteenth Amendments by placing restrictions on her access to Department information. Snyder then moved for partial summary judgment with respect to liability on her § 1983 claim (*see* J.A. at 17-19). Ringgold opposed Snyder's motion and filed a cross-motion for summary judgment (*see* J.A. at 38-46). On January 6, 1997, the court denied Ringgold's motion for summary judgment and granted Snyder's motion for summary judgment on liability (*see* J.A. at 84).

On January 28, 1997, the defendant, with leave of court, filed a supplemental motion for summary judgment, asserting the defense of qualified immunity (*see* J.A. at 56-58). On February 11, 1997, the court denied this motion, holding—without analysis—that defendant was not entitled to qualified immunity on plaintiff's claim (*see* J.A. at 88).

Defendant appealed the district court's denial of qualified immunity to the Court of Appeals for the Fourth Circuit.

The Court of Appeals for the Fourth Circuit reversed in an unpublished opinion, holding that the district court erred in denying the defendant qualified immunity (App. at 5a). The Court of Appeals for the Fourth Circuit held that the defendant-respondent Samuel Ringgold is entitled to qualified immunity under § 1983 because a reasonable police official in Ringgold's position would not have understood that his decisions to deal with Snyder only in writing and to prohibit her from filming exclusive interviews at the station house violated any clearly established First Amendment right to nondiscriminatory access to government information.

The Court's rationale was two-pronged. First, the Court held that the plaintiff's alleged right to equal access had not been specifically adjudicated, since no previous Supreme Court or Fourth Circuit case had recognized this right, and since there is little support for such a right even in the case law from other circuits (App. at 6a-7a). Second, the Court determined that Ringgold's decisions to restrict the manner in which she could gather departmental information did not violate "any right that is manifestly

included within the more general applications of the core principles of the First Amendment" (App. at 7a). The Court found that the right of "equal access" to governmental information for which plaintiff argues was contrary to well-settled practice, would confer an untenable special privilege on the press, and was not an obvious extension of core First Amendment principles prohibiting government regulation of the content of speech (App. at 8a-10a). Under these circumstances, the Court concluded that

> the contours of any right that a reporter has not to be discriminated against in her access to governmental information . . . are not sufficiently clear that Ringgold—or any other "reasonable official"—would have understood that simply restricting the manner in which Snyder could receive Department information and refusing her interviews on Department premises violated that right.

(App. at 10a.)

ARGUMENT

I. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD AND ITS DECISION DOES NOT CONFLICT WITH *UNITED STATES v. LANIER*.

Snyder alleges that the Court of Appeals applied the incorrect legal standard for determining when a right

is clearly established for purposes of qualified immunity. Specifically, Snyder alleges that the Court of Appeals required a showing that the right to equal access had been specifically adjudicated in a previous Supreme Court or Fourth Circuit decision, and that this requirement conflicts with *United States v. Lanier*, 117 S. Ct. 1219 (1997) (Pet. at 2, 16-17). Snyder errs, for several reasons.

A. The Court Of Appeals Did Not Require A Specific Adjudication In Order To Show That A Right Has Been Clearly Established.

Contrary to petitioner's allegation, the Court of Appeals Fourth Circuit did *not* require a specific adjudication in order to prove a clearly established right for First Amendment purposes. The Court of Appeals stated that

> [a] right is "clearly established" for qualified immunity purposes if it has been "specifically adjudicated," that is, if it has been "authoritatively decided by the Supreme Court, the appropriate United States Court of Appeals, or the highest court of the state" in which the officers acted. . . . *Additionally, a right my be clearly established even though it has not been specifically adjudicated when it is "manifestly included within more general applications of the core constitutional principle invoked."*

(App. A at 6a (emphasis added).)

The Court held that defendant Ringgold is entitled to qualified immunity because Snyder had established *neither* a specifically adjudicated right to equal access to government information *nor* that Ringgold's decision to restrict her access violated "any right that is manifestly included within more general applications of the core . . . principles of the First Amendment" (App. at 7a).

B. The Court Of Appeals Applied The Correct Legal Standard For Determining Qualified Immunity.

The doctrine of qualified immunity provides Ringgold, in his individual capacity, with a full defense to Snyder's § 1983 claim, provided that Ringgold's conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Underlying qualified immunity is the concern that civil damages awards against public officials would prove too expensive to the public, would discourage public service, and would impair governmental decisionmaking. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). Thus, the law shields government officials from civil liability unless the official reasonably should have known that his actions violated clearly established constitutional rights. *Harlow*, 457 U.S. at 818.

In determining whether the specific right allegedly violated is clearly established, the "'proper focus is not upon the right at its most general or abstract level, but at the level of its application to the specific conduct charged.'" *Dimeglio v. Haines*, 45 F.3d 790, 803 (4th Cir. 1995). As held in *Anderson*, 483 U.S. at 640:

> [T]he right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent.

Judged by these principles, the Court of Appeals applied the correct standard. The Court of Appeals inquired whether the right to equal access to government information had been specifically adjudicated, or whether the right was manifestly included within the more general applications of core First Amendment principles. Through this inquiry, the Court determined ultimately that the existence and contours of any alleged right of equal access to government information was not sufficiently clear that a reasonable official would have understood that restricting the manner in which Snyder could receive Department information and refusing her exclusive interviews on Department premises violated that right (App. at 6a-10a). The Court of Appeals applied the correct legal standard.

C. The Court Of Appeals Decision Does Not Conflict With *United States v. Lanier.*

The Court of Appeals decision does not conflict with *United States v. Lanier*, 117 S. Ct. 1219 (1997). *Lanier* was not a § 1983 case and is only tangentially related to the issues in this case. In *Lanier*, the court held that the constitutional requirement of fair warning under 18 U.S.C. § 242 could not be more demanding than the "clearly established law" required for liability under § 1983. 117 S. Ct. at 1227. The court rejected a standard that would require a prior decision on substantially similar facts in order to provide fair warning that an official's conduct was unlawful. *Id.*

In the present case, contrary to the petitioner's allegation, the Court of Appeals did not require that the specific right be adjudicated by the Supreme Court or any particular court of appeals (App. at 6a-7a). The Court recognized, to the contrary, that a general constitutional rule may apply with obvious clarity to the specific conduct at issue (App. at 7a-10a). The Court concluded, however, that the unlawfulness of Ringgold's actions was not demonstrated, let alone apparent. Under these circumstances, the petitioner's reliance on *Lanier* is misplaced.

II. A REASONABLE POLICE OFFICER WOULD NOT HAVE UNDERSTOOD THAT RESTRICTING THE MANNER IN WHICH PETITIONER COULD RECEIVE DEPARTMENTAL INFORMATION WOULD VIOLATE ANY CLEARLY ESTABLISHED FIRST AMENDMENT RIGHT.

A. There Is No Clearly Established Right To Governmental Information.

As a general matter, there is no established constitutional right of access to information relating to the internal or external affairs of a police department or relating to its criminal investigations. Neither "the First Amendment nor the Fourteenth Amendment mandates a general right of access to governmental information or sources of information within the government's control." *Houchins v. KQED, Inc.*, 438 U.S. 1, 15-16 (1978) (plurality opinion). The First Amendment "does not guarantee the press a constitutional right of special access to information not available to the public generally." *Branzburg v. Hayes*, 408 U.S. 665, 684-85 (1972); *accord Zemel v. Rusk*, 381 U.S. 1, 17 (1965); *Capital Cities Media, Inc. v. Chester*, 797 F.2d 1164, 1173 (3d Cir. 1986).

In the case of proceedings that are traditionally open to the public and that are enhanced by public access, such as criminal trials, the Supreme Court has found in the First Amendment a qualified right of access. *See, e.g.*, *Press Enterprises Co. v. Superior Court*, 464 U.S. 501,

510 (1984); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 (1980). In this setting, the public and press have a constitutional right to access unless the denial of access is necessitated by an overriding governmental interest and is narrowly tailored to serve that interest. *See Press Enterprises*, 464 U.S. at 510; *Richmond Newpapers*, 448 U.S. at 581. It is obvious, however, that police stations and police investigations do not share the traditions of openness on which the Court relied in establishing a qualified right of access in *Press Enterprises* and *Richmond Newspapers*. The plaintiff did not assert below, and cannot establish on appeal, that either the Baltimore City Police Department or the defendant had an affirmative duty to make available to journalists sources of information not available to members of the public generally.

B. There Is No Clearly Established Right To Nondiscriminatory Access To Governmental Information.

What the plaintiff asserted below, and what the Court of Appeals rejected, is that the defendant violated plaintiff's constitutional rights by restricting or limiting her access to information that the Department made available to other members of the media. The Court of Appeals correctly determined that no such right is clearly established since (1) the right has not been adjudicated specifically; and (2) the unlawfulness of Ringgold's conduct was not apparent from preexisting law (App. at 6a-10a).

1. The Alleged Right Had Not Been Established By Specific Adjudication.

As the petitioner concedes and as the Court of Appeals recognized, no Supreme Court or Fourth Circuit decision has held that reporters have a constitutional right of equal or non-discriminatory access to government information that need not be made available to the public (App. at 6a). As the Court of Appeals stated, moreover, there is little support for plaintiff's contention even in the case law of other circuits (App. at 7a).

Petitioner relies on two circuit court decisions to establish her right (Pet. at 11). Neither decision purports to establish a general right of reporters to equal access to government information. Moreover, the facts of these cases differ markedly from Ringgold's limitations on the manner in which Snyder could access Departmental information and his refusal to allow her to participate in filming on Department premises.

Anderson v. Cryovac, 805 F.2d 1 (1st Cir. 1986) involved the validity of a protective order that selectively excluded certain media entities from access to discovery materials. *Id.* at 9. The present case, in contrast, does not involve access to judicial proceedings, but rather involves access to police department information. Moreover, unlike the situation in *Anderson*, Ringgold did not impose an outright ban on access, but only limited the manner in which Snyder was permitted to gather certain police department information.

American Broadcasting Cos. v. Cuomo, 570 F.2d 1080 (2d Cir. 1977), held that New York political candidates could not selectively exclude ABC from "public events" and "public function[s]"—primary election events—while admitting other media representatives. *Id.* at 1080. The present case does not involve access to public events, but involves the legality of limitations Ringgold imposed in the manner in which Snyder is permitted to gather information from the police department.

The plaintiff relies also on several older lower court decisions, *see Quad City Community News Service, Inc. v. Javens*, 334 F. Supp. 8 (S.D. Iowa 1971); *Southwestern Newspapers Corp. v. Curtis*, 584 S.W.2d 362 (Tex. Civ. App. 1979); *Westinghouse Broadcasting, Inc. v. Dukakis*, 409 F. Supp. 895 (D. Mass. 1976). Those cases are distinguishable from the present situation in the purpose and scope of the limitations imposed. *See Quad-City*, 334 F. Supp. at 13-14; *Curtis*, 584 S.W.2d at 364. Furthermore, in those decisions, unlike the instant case, the plaintiffs were *news organizations* that sought and obtained injunctive relief.

As the Court of Appeals recognized, the fact that plaintiff is forced to rely on these few cases—the facts of which differ markedly from Ringgold's limitations on the manner in which Snyder could access Department information and his refusal to allow her to participate in filming an exclusive report on Department premises—demonstrates that there is little support for her contentions even in the case law of other circuits (App. at 7a).

2. *Core First Amendment Principles Do Not Apply With Obvious Clarity To Respondent's Specific Conduct.*

The Court of Appeals also correctly held that Ringgold's decisions to deal with Snyder only in writing (rather than to speak to her directly) and to prohibit her from participating in filming of exclusive WBFF-TV interviews on Department premises did not "violate any right that is manifestly included within more general applications of the core . . . principles of the First Amendment" (App. at 7a). The petitioner completely ignores the Fourth Circuit's analysis, which found many weaknesses in plaintiff's position (App. at 7a-10a).

First, the court reasoned that plaintiff's alleged right to equal access is not clearly established because it runs counter to well established media practices:

> The many weaknesses in plaintiff's position are readily apparent. For example, the broad rule for which plaintiff argues would presumably preclude the common and widely accepted practice among politicians of granting an exclusive interview to a particular reporter. And, it would preclude the equally widespread practice of public officials declining to speak to reporters whom they view as untrustworthy because the reporters have previously violated a promise of confidentiality or otherwise distorted their comments. Additionally, even if the right was somehow limited to situations in which

> access is provided to a broad spectrum of reporters, the plaintiff's rule would still presumably preclude the White House's practice of allowing only certain reporters to attend White House press conferences, even though space constraints make it impractical to open up the conference to all media organizations. That plaintiff's rule flies in the face of so much well settled practice suggests, at least, that it is not clearly established.

(App. at 8a.)

Second, the Court reasoned that plaintiff's alleged right to equal access is not clearly established because it would confer an untenable special status on the media:

> Moreover, the right of "equal access" for which plaintiff argues cannot be limited to members of the media without conferring a privileged First Amendment status on the press, and the Supreme Court has affirmed that the press does not enjoy special First Amendment rights that exceed those of ordinary citizens. *See Branzburg v. Hayes*, 408 U.S. 665, 684-85 (1972) (noting that the First Amendment "does not guarantee the press a constitutional right of special access to information not available to the public generally"). Consequently, plaintiff's asserted right would require that, in each and every circumstance where the government made news available, it would

> have to give access to that information to *everyone* on equal terms. The broad rule for which plaintiff contends thus appears untenable. In any event, the contours of any such right would be difficult to delineate, and certainly cannot be discerned through a straightforward and obvious application of existing First Amendment principles.

(App. at 8a-9a.)

Finally, the court reasoned that plaintiff's alleged right to equal access is not clearly established because it is not an obvious application of the general principle prohibiting content or viewpoint discrimination:

> Plaintiff also argues that, even if a government agency can favor one reporter over another for "legitimate" reasons, it cannot do so because it likes one reporter's stories better than another's. Plaintiff claims that this more specific right not to have her access to government information sources restricted because of her viewpoint and the content of her stories is an "obvious application" of the core First Amendment principle prohibiting content and viewpoint discrimination. However, it is a large analytical leap from holding that government may not regulate or prohibit private speech on the basis of content or viewpoint to holding that government may not make "content-based" distinctions between reporters in granting access to

> government information. Indeed, the government can certainly control the content of its own speech in ways it could never regulate or control the content of private speech. *See, e.g., Rust v. Sullivan*, 500 U.S. 173 (1991). Arguably, by analogy, the government should be able to choose to limit its audience in a way it could not choose to limit the audience available to private speakers. In any event, it should be apparent that the contours of any right that a reporter has not to be discriminated against in her access to government information based on the content of her prior stories are not "sufficiently clear" that Ringgold—or any other "reasonable official"—would have understood that simply restricting the manner in which Snyder could receive Department information and refusing her exclusive interviews on Department premises violated that right. *Anderson*, 483 U.S. at 640.

(App. at 9a-10a.)

The petitioner does not even challenge the Court of Appeals' analysis and reasoning but instead seeks to cloak herself in the general penumbra of content-based discrimination. The fatal flaw in petitioner's analysis is that she is attempting to extend general First Amendment principles in a manner that would not be obvious to the average police officer at the stationhouse. The contours of a reporter's rights to nondiscriminatory access to

government information, if any, are not apparent from preexisting law.

Freedom from content-based discrimination is a principle established only at a general and abstract level, not at the level of application to the conduct challenged here. Neither the Supreme Court not any circuit court has established a general prohibition on content-based discrimination by government officials in granting access to govenrment information. The defendant cannot be held liable because he failed to accurately predict that general First Amendment decisions might someday be extended to prohibit goverment officials from favoring some journalists over others in disseminating government information. *See Anderson.* Under these circumstances, regardless of whether plaintiff has established a genuine issue of fact concerning whether the restrictions on palintiff's access were content-based (a point which defendant contests), plaintiff has not established any violation of any clearly established constitutional right.

C. The Defendant Could Reasonably Have Believed That His Actions In Restricting Plaintiff's Access To Departmental Information Were Lawful.

Ringgold reasonably could have believed that the Department's interest in deterring and preventing Snyder's abuse of the Department's public information system outweighed plaintiff's interest in unencumbered access to departmental information. In determining whether a restriction violates a right of access, this Court has balanced the interests of the parties. In *Pell v. Procunier*,

417 U.S. 817 (1974), for example, a case involving public and press access to prisons, the Court quoted and relied upon a balancing test set forth in *Branzburg v. Hayes*, 408 U.S. at 690-91, which upheld grand juries' power to question reporters about confidential sources in part on the ground that the Court could

> perceive no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news gathering that is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial.

Pell, 417 U.S. at 833.

In the present case, similarly, the defendant reasonably could have believed that the Department's legitimate interests outweighed plaintiff's interests in having unrestricted access to departmental information. There was no governing authority dictating to Ringgold how the interests of plaintiff and the Department's interests must be balanced and accommodated.

The defendant instructed public affairs staff and new officers not to go "off-the-record" with the plaintiff, in substantial part because she violated a promise of confidentiality and misrepresented to her employer the information she had received from the Department (J.A. at 14). The Department has a legitimate interest in

ensuring the confidentiality of information and sources provided to the media on an "off-the-record" basis. For example, a reporter who publishes "off-the-record" information could compromise the integrity of a pending investigation. A reporter who discloses the identity of a confidential source on a sensitive subject relating to departmental affairs could compromise the source's relationships with fellow officers or his superiors. Similarly, the Department has a legitimate interest in ensuring that media reporters give accurate and complete information to their employers so that the public will receive full and accurate reporting regarding criminal incidents and departmental affairs.

By violating her promise of confidentiality and by misrepresenting information she had received from the Department, plaintiff demonstrated that she could not be trusted to work within existing departmental parameters. Under these circumstances, the defendant could reasonably have believed that he was justified in advising his fellow officers not to go "off-the-record" with the plaintiff and in advising the *City Paper* staff that he would no longer speak with the plaintiff.

The defendant instructed plaintiff to submit her requests for information in writing, notwithstanding that other journalists were not required to submit requests in writing. However, the defendant reasonably could have believed that plaintiff's treatment was justified by her abuse of the public affairs system. The plaintiff, unlike other journalists, excessively and needlessly paged public information officers at home on weekends (J.A. at 15, 36 ¶ 7). The plaintiff continued paging officers even after the defendant had warned plaintiff and her employer on

several occasions not to do so. The defendant was not required to tolerate indefinitely plaintiff's behavior: The press has no special immunity from the application of general rules of conduct in the gathering of news. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991); *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 887 F. Supp. 811, 821 (M.D.N.C. 1995). To address plaintiff's abusive behavior, the defendant reasonably could have believed that he was justified in requiring plaintiff to submit requests for information in writing.

The defendant also instructed WBFF-TV (her new employer) that it would not be allowed to film a story about the homicide division on Department property if plaintiff was part of the television crew, and WBFF-TV filmed the story without the plaintiff. Given plaintiff's pattern of misbehavior, the defendant reasonably could have believed that he was justified in not permitting her such unrestricted access to the Department.

The defendant did not deny plaintiff all access to information, but only placed on the plaintiff's news-gathering what he reasonably could have believed to be legitimate time, space, and manner restrictions. Significantly, the defendant produced all of the information that plaintiff claims she was denied to plaintiff's media sponsors; it was the plaintiff's misconduct, not the viewpoints expressed by the news stories, that the defendant sought to redress. There was no established law that would have made a reasonable officer in the defendant's position understand that his actions were unlawful. The alleged unlawfulness of the defendant's conduct was not apparent in light of preexisting law. Under these circumstances, the Court of

Appeals correctly held that the defendant is entitled to qualified immunity.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Robert C. Verderaime, #00581

Verderaime & DuBois, P.A.
1231 North Calvert Street
Baltimore, Maryland 21202
(410) 752-8888

Attorneys for Appellant